

ASEAN–Australia–New Zealand Free Trade Area Bill

Government Bill

Explanatory note

General policy statement

This Bill amends New Zealand law as part of the implementation of a free trade agreement, namely the Agreement Establishing the ASEAN (Association of South East Asian Nations)–Australia–New Zealand Free Trade Area done at Cha-am, Phetchaburi, Thailand on 27 February 2009 (the **AANZFTA**). The Bill amends the Tariff Act 1988 and the Customs and Excise Act 1996. The AANZFTA will also be implemented by regulations, which will amend the Tariff (in relation to the AANZFTA preferential rates of duty) and the Customs and Excise Regulations 1996 (in relation to the AANZFTA rules of origin).

Amendments in the Bill to the Tariff Act 1988 will enable the application of preferential tariff rates under the AANZFTA and will enable transitional safeguard measures to be applied in appropriate circumstances on imports originating from AANZFTA party countries. Amendments in the Bill to the Customs and Excise Act 1996 will create a system for certification bodies that are authorised to issue the necessary certificates of origin for goods exported to AANZFTA party countries.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill to commence on a date appointed by Order in Council. This is in order to co-ordinate the Bill's commencement with the entry into force, at the international level, of the AANZFTA.

The Bill is an omnibus Bill in terms of standing order 259(a). It is intended that the Bill will be divided into separate Bills at the committee of the whole House stage.

Part 1

Amendments to Tariff Act 1988

Clause 3 states that the principal Act being amended in this Part is the Tariff Act 1988.

Clause 4 sets out the purpose of *clauses 5, 6, and 10*.

Clause 5 adds definitions relating to the AANZFTA to section 2. These include the definitions of the AANZFTA and of a specified AANZFTA party, which is a country that is declared by Order in Council to be a party to the AANZFTA. *Clause 5* also makes consequential amendments to other definitions in section 2.

Clause 6 provides for the application of preferential tariffs in the case of goods that are the produce or manufacture of specified AANZFTA parties, and for the ability to set different Tariff rates of duty for a specified AANZFTA party. Current sections 7 and 7A are redrafted in *clause 6* as *new sections 7 to 7B* in order to enhance their accessibility for readers given that the AANZFTA changes are the most recent in a long line of changes to section 7 made since the enactment of the Tariff Act in 1988.

Clause 7 sets out the purpose of *clauses 8 and 9*.

Clause 8 amends the definition of free trade agreement in section 15A in order to provide for the application of transitional safeguard measures (including provisional measures) in relation to the AANZFTA.

Clause 9 makes a consequential amendment to section 15H(1)(b)(ii).

Clause 10 provides that Schedule 1 is amended by making a change to note 2 and by inserting the *new note 3* set out in the *Schedule* to the Bill. *New note 3* sets out the preferential countries and preferential abbreviations referred to in *new sections 7 to 7B*.

Part 2

Amendments to Customs and Excise Act 1996

Clause 11 states that the principal Act being amended in this Part is the Customs and Excise Act 1996.

Clause 12 sets out the purpose of *Part 2*.

Clause 13 amends section 64A, so that sections 64A to 64C will apply to the AANZFTA. The amendments will enable the chief executive of the New Zealand Customs Service to designate certification bodies that are authorised to issue a New Zealand certificate of origin in respect of goods for export to countries that are party to the AANZFTA. A certificate of origin will identify the goods and certify that they are of New Zealand origin in terms of the AANZFTA. Before designating a certification body, the chief executive must be satisfied that the body meets any prescribed criteria. A designation may be subject to terms and conditions prescribed by regulation or imposed at the discretion of the chief executive. Regulations may be made prescribing—

- criteria to be met by bodies wishing to be designated as certification bodies:
- forms and fees and the manner in which applications for designation as a certification body must be made:
- terms and conditions of designations.

National interest analysis

An extended national interest analysis has been prepared that takes the place of a regulatory impact analysis. It is available on the Treasury Internet site at www.treasury.govt.nz/publications/informationreleases/ris and the AANZFTA Internet site at www.asean.fta.govt.nz.

Hon Tim Groser

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the ASEAN–Australia–New Zealand Free Trade Area Act **2009**.
- 2 Commencement** 5
This Act comes into force on a date appointed by the Governor-General by Order in Council.

- Part 1**
- Amendments to Tariff Act 1988**
- 3 Principal Act amended** 10
This Part amends the Tariff Act 1988.

Implementation of preferential tariffs
- 4 Purpose of sections 5, 6, and 10** 15
The purpose of **sections 5, 6, and 10** is to amend the principal Act to enable the implementation of preferential tariffs in accordance with the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area done at Cha-am, Phetchaburi, Thailand on 27 February 2009.
- 5 Interpretation**
- (1) The definition of **least developed country** in section 2(1) is amended by omitting “section 7 of this Act” and substituting “**section 7A(1)(c)**”.

- (2) The definition of **less developed country** in section 2(1) is amended by omitting “section 7 of this Act” and substituting “**section 7A(1)(d)**”.
- (3) The definition of **specified TPA party** is amended by inserting “under **section 7A(1)(b)**” after “Order in Council”. 5
- (4) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**AANZFTA** means the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area done at Cha-am, Phetchaburi, Thailand on 27 February 2009 10
- “**ASEAN** means the Association of South East Asian Nations
- “**preferential abbreviation** has the meaning given to it by **section 7(3)**
- “**preferential country** has the meaning given to it by **section 7(3)** 15
- “**specified AANZFTA party** means a country that is for the time being declared by Order in Council under **section 7A(1)(a)** to be a specified AANZFTA party for the purposes of this Act”.
- 6 New sections 7 to 7B substituted** 20
- Sections 7 and 7A are repealed and the following sections substituted:
- “**7 Application of Tariff**
- “(1) The Tariff applies to goods in a Tariff item that are the product or manufacture of a preferential country at the rate specified 25 either—
- “(a) in the column of the Tariff headed Preferential Tariff after a preferential abbreviation; or
- “(b) in some other way in the Tariff by reference to a preferential abbreviation or to a preferential country (for example, in a footnote or other indicator). 30
- “(2) The liability to duty of any goods that are the produce or manufacture of a country must, for the purposes of this section, be determined according to the status of that country at the time when the goods are imported into New Zealand. 35
- “(3) In this section, unless the context otherwise requires,—

“**preferential abbreviation** means an abbreviation listed in **note 3** of Schedule 1 that relates to a country

“**preferential country** means a country listed in **note 3** of Schedule 1.

- “**7A Orders in Council about preferential countries** 5
- “(1) The Governor-General may, by Order in Council, do all or any of the following:
- “(a) declare a country that is a party to the AANZFTA to be a specified AANZFTA party for the purposes of this Act:
- “(b) declare a country to be a specified TPA party for the purposes of this Act if the country— 10
- “(i) is a party to the TPA; or
- “(ii) is provisionally applying the terms of the TPA:
- “(c) declare a country to be, or not to be, a least developed country for the purposes of this Act: 15
- “(d) declare a country to be, or not to be, a less developed country for the purposes of this Act.
- “(2) The Governor-General may, by an Order in Council making a declaration under **subsection (1)** about a country or any other Order in Council relating to that country,— 20
- “(a) declare that, in relation to any specified Tariff items, any rate of duty or exemption from duty otherwise applicable to that country is not to apply to that country:
- “(b) modify, in whole or in part, the Tariff rates of duty applicable to goods from that country. 25
- “(3) No modification under **subsection (2)(b)** relating to a specified TPA party or a specified AANZFTA party may have the effect of imposing on any goods a higher duty than that set out in respect of those goods in the Normal Tariff, unless the Governor-General is satisfied that the modification is— 30
- “(a) necessary or advisable in the public interest; and
- “(b) consistent with New Zealand’s international obligations.
- “(4) No modification under **subsection (2)(b)** relating to a less developed country or a least developed country may have the effect of imposing on any goods a higher duty than that set out in respect of those goods in the Normal Tariff. 35

“7B Evidence of whether South Pacific Regional Trade and Economic Co-operation Agreement is in force in relation to country

“(1) A certificate given by the Secretary of Foreign Affairs and Trade to the effect that any country is or is not one in relation to which, at the time of the importation or entry of the goods into New Zealand, the South Pacific Regional Trade and Economic Co-operation Agreement was in force for the purposes of this Act is conclusive evidence of that fact. 5

“(2) Any court or any person acting judicially to which or to whom, in any proceeding, any certificate under **subsection (1)** is produced must take judicial notice of the signature on it of the Secretary of Foreign Affairs and Trade. 10

“(3) For the purposes of this section,—

“**court** includes the Supreme Court, the Court of Appeal, the High Court, and any District Court 15

“**District Court** includes—

“(a) a Family Court; and

“(b) a Youth Court

“**person acting judicially** means any person having in New Zealand by law authority to hear, receive, and examine evidence 20

“**proceeding** means—

“(a) a proceeding conducted by a court; and

“(b) any interlocutory or other application to a court connected with a proceeding.” 25

*Application of transitional safeguard measures
and provisional transitional safeguard measures*

7 Purpose of sections 8 and 9

The purpose of **sections 8 and 9** is to amend the principal Act to provide for the application of transitional safeguard measures and provisional transitional safeguard measures in relation to the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area done at Cha-am, Phetchaburi, Thailand on 27 February 2009. 30 35

8 Interpretation

The definition of **free trade agreement** in section 15A is amended by adding “; or” and also by adding the following paragraph:

“(c) the AANZFTA and AANZFTA side instruments that relate to safeguards”.

9 Provisional transitional safeguard measure

Section 15H(1)(b)(ii) is amended by inserting “or the AANZFTA” after “the China FTA”.

10 Schedule 1 amended

(1) Note 2 of Schedule 1 is amended by omitting the last paragraph and substituting the following paragraph:

“The rate of duty of Free, appearing by itself in the Preferential Tariff duty column, means that goods from the following countries are entered free of duty (goods that are the produce or manufacture of countries in respect of which the following preferential abbreviations apply: AAN, AU, CA, CN, LDC, LLDC, Pac, SG, TH, or TPA).”

(2) Note 2 of Schedule 1 is amended by adding the following paragraph:

“The rate of duty of Free applies under the Tariff to all goods that are the produce or manufacture of Singapore.”

(3) Schedule 1 is amended by inserting the note set out in the Schedule of this Act after note 2.

Part 2

**Amendments to Customs and Excise Act
1996**

11 Principal Act amended

This Part amends the Customs and Excise Act 1996.

12 Purpose of Part

The purpose of **this Part** is to amend the principal Act to provide for a system of issuing New Zealand certificates of origin in relation to goods being exported to countries that

are parties to the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area done at Cha-am, Phetchaburi, Thailand on 27 February 2009.

- 13 New Zealand certificates of origin for goods for export to China** 5
- (1) The heading to section 64A is amended by omitting “**China**” and substituting “**party to free trade agreement**”.
- (2) Section 64A(1) is amended by—
- (a) inserting “in relation to a party to a free trade agreement” after “(a **certification body**)”; and 10
 - (b) omitting “China” and substituting “that party”.
- (3) Section 64A(2) is amended by omitting “China” and substituting “a party to a free trade agreement”.
- (4) Section 64A(3) is amended by—
- (a) omitting “China FTA” in the first place where it appears and substituting “relevant free trade agreement”; and 15
 - (b) omitting “the China FTA” in the second place where it appears and substituting “that agreement”.
- (5) Section 64A is amended by inserting the following subsection after subsection (3): 20
- “(3A) The Governor-General may, by Order in Council, declare a country that is a party to the AANZFTA to be a specified AANZFTA party for the purposes of this Act.”
- (6) Section 64A is amended by repealing subsection (4) and substituting the following subsection: 25
- “(4) For the purposes of this section,—
- “**AANZFTA** means the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area done at Cha-am, Phetchaburi, Thailand on 27 February 2009
- “**ASEAN** means the Association of South East Asian Nations 30
- “**China FTA** means the Free Trade Agreement between the Government of New Zealand and the Government of the People’s Republic of China done at Beijing on 7 April 2008
- “**free trade agreement** means—
- “(a) the China FTA; or 35
 - “(b) the AANZFTA

“**party to a free trade agreement** means,—

“(a) in relation to the China FTA, China; or

“(b) in relation to the AANZFTA, a specified AANZFTA party

“**specified AANZFTA party** means a country that is for the 5
time being declared by Order in Council to be a specified
AANZFTA party for the purposes of this Act.”

Schedule

s 10

New note 3 inserted in Schedule 1

3 Preferential countries and preferential abbreviations

Preferential country	Preferential abbreviation
Country that is a specified AANZFTA party (<i>see</i> section 2(1))	AAN
Australia	AU
Canada	CA
China	CN
United Kingdom of Great Britain and Northern Ireland, the Isle of Man, or the Channel Islands	GB
Country that is a less developed country (<i>see</i> section 2(1))	LDC
Country that is a least developed country (<i>see</i> section 2(1))	LLDC
Malaysia	MY
Country in relation to which the South Pacific Regional Trade and Economic Co-operation Agreement is in force	Pac
Singapore	SG
Thailand	TH
Country that is a specified TPA party (<i>see</i> section 2(1))	TPA